

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL S. MAPES, MILTON
PETERSEN IV, BRIAN LEICHNER,
DAVID MOHR and DAVID STADING,

Plaintiffs,

v.

WELLINGTON CAPITAL GROUP, INC.,

Defendant.

Civil No. 8:07cv77

MOTION TO QUASH

COMES NOW Defendant, Wellington Capital Group, Inc. ("Wellington"), and hereby moves this Court for an order quashing the Notice to Take Rule 30(b)(6) Deposition of Wellington, as well as the Notices to take Depositions of Matt Mokwa and Frank Amodeo filed by Plaintiffs on December 18, 2007. In support of its Motion, Wellington states and alleges as follows:

1. On or about December 18, 2007, Plaintiffs filed their Amended Notice of Deposition Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure as to Wellington (Filing No. 27). The deposition was noticed for January 3, 2008 at 9:00 a.m. at the law offices of Wellington's counsel in Omaha.

2. On or about December 18, 2007, Plaintiffs filed their Notice to take the deposition of Frank Amodeo (Filing No. 28). The deposition was noticed for January 4, 2008 at 9:00 a.m. at the law offices of Wellington's counsel in Omaha.

3. On or about December 18, 2008, Plaintiffs filed their Notice to take the deposition of Matt Mokwa (Filing No. 29). The deposition was noticed for January 4, 2007 at 1:00 p.m. at the law offices of Wellington's counsel in Omaha.

4. The aforementioned deposition notices were received on the afternoon of December 18, 2007, following the failed mediation of this matter that had commenced earlier that same day.

5. Prior to the mediation of this matter, Plaintiffs had noticed the Rule 30(b)(6) Deposition of Wellington to take place on November 20, 2007 at 9:00 a.m. at the law offices of Plaintiffs' counsel in Omaha (Filing No. 24). Because the parties had agreed to mediate this matter in the meantime, said deposition was cancelled pending the outcome of the mediation. In the event the mediation was unsuccessful, Wellington agreed to reschedule the 30(b)(6) deposition 30 days after the December 18, 2007 mediation. See Exhibit "1", Exhibit "A" attached to Defendant's Index of Evidence in support of this Motion. As stated above, however, Plaintiffs noticed the above-referenced depositions for January 3rd and 4th, 2008.

6. Also on December 18, 2007, counsel for Wellington received a letter from Plaintiffs' counsel stating that he would be willing to move the above-referenced deposition dates to alternative dates as provided by counsel for Wellington. Counsel for Wellington are agreeable to providing alternate dates; however, Mr. Passarelli's December 18, 2007 correspondence also indicated that he would expect to receive, well in advance of the depositions, "all information and documentary materials responsive to outstanding discovery requests. To the extent the same are not provided, we will move the Court for an Order excluding such information and documentary materials on the basis of the fact that it was not provided as required in response to the discovery requests which were served last May." See Exhibit "1", Exhibit "B" attached to Defendant's Index of Evidence in support of this Motion. .

7. Wellington timely complied with Plaintiffs' discovery requests served in May. Wellington also supplemented its discovery responses on December 13, 2007, five (5) days in advance of mediation of this matter, as agreed to by the parties. With regard to additional documents, counsel for Wellington has, on numerous occasions, relayed to counsel for Plaintiffs that Wellington has approximately two (2) warehouses of documents in storage in Florida, and that additional documents responsive to Plaintiffs' discovery requests may exist within said warehouses. Counsel for Wellington has further relayed to counsel for Plaintiffs that Wellington has diligently been working to sort out these documents, and that it has been in the process of scanning these records to electronic files; however, due to the voluminous amount of records and the time-consuming nature of this task, it is estimated that Wellington may not be able to produce any additional documents until approximately February 2008.

8. Wellington and their representatives are not able to travel to Omaha on January 3rd or 4th for their depositions. Plaintiffs' noticing of the above-mentioned depositions for January 3rd and 4th, 2008 is also inadequate in light of the holidays and, further, due to the fact that the witnesses sought to be deposed are located in Florida and travel arrangements need to be made. Moreover, the above-referenced deposition notices are inconsistent with the communications between counsel. See Exhibit 1 to Wellington's Index of Evidence in support of this Motion.

9. In light of the Wellington's ongoing efforts regarding documents production as above-described, as well as Wellington's agreement to reschedule the 30(b)(6) deposition thirty (30) days after the mediation, Plaintiffs' noticing of the above-mentioned depositions for January 3 and 4, 2008 is therefore premature, inconsistent

with the parties' agreement, and, without supplemental documents (which Wellington is diligently working to produce), would be a waste of time and resources.

WHEREFORE, Defendant prays for an Order quashing Plaintiffs' deposition notices (Filing Nos. 27, 28, and 29) and for such other and further relief as this Court finds just and equitable.

DATED this 27th day of December, 2007.

WELLINGTON CAPITAL GROUP, INC.,
Defendant

By /s/Elizabeth M. Callaghan
Michael J. Mooney, #12886
Robert A. Mooney #21304
Elizabeth M. Callaghan, #22238
GROSS & WELCH, P.C., L.L.O.
2120 South 72nd Street, Suite 1500
Omaha, Nebraska 68124
402-392-1500
Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of December 2007, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system which sent notification of such filing upon all parties who filed an appearance or motion by electronic filing in this case:

John P. Passarelli
James M. Sulentic
1650 Farnam Street
Omaha, NE 68102
john.passarelli@kutakrock.com
james.sulentic@kutakrock.com

/s/Elizabeth M. Callaghan
Elizabeth M. Callaghan